IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

R.S.A No.797 of 2007
Date of Decision: May 21, 2007

UNION OF INDIA & OTHERS

.....APPELLANTS

VERSUS

SEPOY RAJPAL

.....RESPONDENT

. . .

CORAM: HON'BLE MR. JUSTICE A.N.JINDAL

. . .

PRESENT:- Ms. Sushma Chopra, Advocate for the appellants.

A.N.JINDAL, J (ORAL)

The only question required to be determined in the instant case is that whether the appellants followed the proper procedure as prescribed under the earlier Act/Rules. There is no denying the fact that the Civil Court cannot suit over the enquiry report if conducted as per law but in the case in hand, Naib Subedar Sudarshan Singh, DW1, summoned to prove the enquiry proceedings, in his cross-examination admitted that according to the rules Deserter who remained as supervisory strength of the Regiment Training Centre of Depot/Depots concerned for a period of 10 years from his excursion and thereafter the order

of his dismissal from service could be passed. But hearing this case the respondent was enrolled in the Army on 17.09.1988 but the proceedings regarding dismissal were initiated against him before the expiry of 10 years and he was declared deserter with effect from 20.09.1995. The record further reveals that before passing the order of dismissal from service the defendants neither issued any show cause notice to the respondents nor any satisfaction was recorded by the competent officer to the effect that it was not expedient or reasonably practicable to comply with the provisions of Rule 17 despite the facts as admitted by Sudarshan Singh DW1 that permanent address of the respondent was already on the record of the appellants. The learned Appellate Court while setting aside the dismissal of the respondent has relied upon the judgment delivered in case *Dohare Abhay Padmakar Vs. Union of India 2002 Volume (III) SCT 130* wherein it was observed that the appellants before passing the order of dismissal should comply with the provisions of Rule 17 read with Sub-Section 30 of Section 20 of the Army Act.

Having examined the records of the case both the courts have returned the concurrent finding of the fact that the order of dismissal is illegal. However, the plaintiff was not held entitled to consequential benefits like pay, allowances, bonus, promotion from the date claimed by him and it was

further observed that the appellants would be at liberty to pass fresh orders in accordance with law.

Thus while finding no fault with the impugned judgment, this regular second appeal filed by the Union of India is dismissed.

(A.N.Jindal)
Judge

May 21,2007

Ruchika